

APPRAISING ARIZONA

ARIZONA BOARD OF APPRAISAL NEWSLETTER

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ARIZONA APPRAISERS

	<u>6/07</u>	<u>6/08</u>
Licensed Residential	1143	992
Certified Residential	1010	1177
Certified General	793	822
Nonresident Temporary	31	39
TOTAL.....	2977	3030

Property Tax Agents	261	287
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COMPLAINT STATISTICS THROUGH 6/30/08

<u>CALENDAR YEAR</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2007</u>	<u>2008</u>
Filed	209	243	129		
Heard by Board				619	417
<u>OF THOSE COMPLAINTS:</u>					
Dismissed	73	91	20	98	32
Referred to investigation	84	94	26	116	46
Nondisciplinary letter of concern	30	16	6	20	8
Nondisciplinary letter of remedial action	11	19	4	18	11
Disciplinary letter of due diligence	6	12	0	9	6
Probation	53	48	2	44	47
Referred to informal hearing	67	70	1	79	32
Referred to formal hearing	39	37	0	32	34
Suspension	28	4	0	4	25
Surrender	2	2	1	2	2
Revocation	2	4	0	4	2
Cease and desist letters	24	6	0	4	4
<u>Violation Levels:</u>					
I	35	21	8	25	11
II	11	30	4	23	17
III	22	42	1	41	26
IV	4	8	1	6	5
V	33	6	0	5	25

Note that unresolved complaints at the time of this writing include pending investigations, informal hearings or formal hearings that may result in dismissal, surrender, revocation, other disciplinary action or nondisciplinary action.

Additional Information

	<u>CY05</u>	<u>CY06</u>	<u>CY07</u>	<u>CY08</u>
Jurisdiction Expired				
& Complaints Closed	21	20	11	7
Denials-New Applications	5	7	7	3
Denials- Renewal Applications	2	4	1	0

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The Board's website now provides the opportunity for all interested parties to **join a subscription list to receive News & Alerts** immediately as they are issued by email from the Board. The Board's website continues to be revamped to provide information in an easy format and remains an ongoing project.

**A WORD FROM THE CHAIRMAN—
WHY DOESN'T THE BOARD JUST REVOKE OR
SUMMARILY SUSPEND THAT APPRAISER'S
LICENSE? THE APPRAISER OBVIOUSLY IS A
DANGER TO THE PUBLIC AND THE BOARD DOES NO
MORE THAN SLAP THE APPRAISER'S HAND!**

Les Abrams, Arizona Board Chairperson

Over the past several months the Board has received numerous comments from several members of the public and regulated community concerning the disciplinary and nondisciplinary actions taken in complaints against appraisers.

The Board's mission is to protect the public by promoting quality real estate appraisal in Arizona. In addition to ensuring that all Arizona appraisers meet the education, experience and examination criteria established by the Appraiser Qualifications Board of The Appraisal Foundation, the Board acts as a disciplinary body to ensure conformity with the statutes, rules and regulations governing the Board. Just as appraisers must comply with USPAP, the Board must comply with the laws that govern the Board.

Nondisciplinary actions and disciplinary actions handed out by the Board are governed by U.S. Title XI; the Appraisal Subcommittee established by Title XI; A.R.S. §§ 32-3631 and 32-3632; A.A.C. R4-46-301, R4-46-302 and R4-46-303. The Board also is bound by the principles of due process which guide or drive the Board's decisions. The Board consults with its assistant attorney general to obtain answers to any legal questions it may have.

The Board has also adopted Substantive Policy Statement #1, which is a guideline for complaint resolution. Although each complaint is heard on its own merits, the Board does rely on its guideline for complaint resolution in an attempt to maintain consistency in its decisions.

Suspension and revocation are disciplinary actions that the Board reserves for the most egregious violations of USPAP and Board statutes and rules. The Level IV or V violations are significant, generally involve ethics or competency and rise to the level of affecting the credibility of the assignment. In addition, Level V violations generally involve significant violations that include the willful disregard of USPAP, Board statutes and rules.

Board rules do provide for summary suspensions. "If the Board finds that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the Board may order a summary suspension pending proceedings for revocation or other action." "Summary suspension" means an immediate suspension of a license, certificate, or registration by the Board based on a finding that the public health, safety, or welfare imperatively requires emergency action. Summary suspensions have been issued by the Board in such instances where an appraiser accepted numerous fees for appraisals that were never performed; where an appraiser under a Board order providing for mentorship performed appraisals without supervision by the mentor; where an appraiser admitted falsifying an experience log on an application; and where an appraiser had been convicted of child molestation. The summary

suspension based on criminal activities was issued based on a conviction. Allegations or criminal indictments are not convictions. If the Board were to issue a summary suspension based on allegations or a criminal indictment, it would have to be prepared to prove the underlying conduct at formal hearing within 30 days. Obtaining such proof could be very difficult and could jeopardize a conviction in the criminal indictment. However, that would not preclude the Board from opening its own complaint based on the criminal indictment and proceeding with its complaint process.

The Board takes its mission to protect the public very seriously. The Board reviews each and every complaint it receives and if violations are found, takes nondisciplinary or disciplinary action based on the laws that govern the Board.

**NOVEMBER 1, 2008 FIRM DATE
IMPLEMENTATION OF THE 2008 CRITERIA**

An applicant applying under the 1998 Criteria will have to **complete** all three components (1998 criteria education completed on or before 12/31/07; experience and examination) **AND** the license or certificate **must be issued** by the Board on or before **October 31, 2008**.

To meet the 1998 Criteria, the 15-hour USPAP course must be completed prior to 12/31/07 (which includes passing the course examination). The USPAP course also must have been taken within two years prior to the date the application is filed with the Board; and must not have been taken through distance education.

Applicants are encouraged to read the requirements and complete the application carefully and to double check the completed application to make sure it is filled out accurately and completely and that all required documentation is included with the application submission to the Board.

It is strongly recommended that an applicant applying under the 1998 Criteria file the application **as soon as possible**. Once an application is received in the Board office, the following steps must be completed before a license or certificate is issued:

1. Application is reviewed by staff to ensure that all questions have been answered properly and that all required documentation is included.
2. Staff requests any missing information or documentation and copies of appraisals from experience log.
3. Upon receipt of additional information and appraisals, staff compares appraisals to information on experience log. If the information is inconsistent, staff will request additional information. If the information is consistent, the application is placed on the Application Review Committee's agenda. See Committee Filing Deadlines on website under Licensing for cut-off dates. Again, applicants are encouraged to file applications and all requested documentation as soon as possible and not to wait until the Committee Filing Deadlines. The Committee Filing Deadlines are not for the filing of the application, but for the receipt of all requested documentation required in processing steps #1-#3.

4. Application Review Committee examines appraisals for compliance with USPAP. If the appraisals do not comply with USPAP, additional information will be requested from applicant. Upon receipt of requested additional information, the application will be placed on the Application Review Committee's next agenda. Once the appraisals are found to be USPAP compliant, the Application Review Committee makes recommendation to the Board to approve the application.

5. The Board generally meets the day after the Application Review Committee and may or may not accept the Application Review Committee's recommendations.

6. Upon the Board's approval, an examination approval card is issued by staff so that applicant can register to take the examination. Upon receipt of the examination approval card, applicants are urged to register for the examination as soon as possible. Because of the number of applicants taking the examination, the available examination dates fill up quickly. The examination is a practice-based examination that can take 6-8 hours to complete depending on the appraiser classification.

7. Once an applicant has passed the examination, staff is notified by the examination administrator. Staff must receive notification directly from the examination administrator.

8. Once staff has been notified that applicant has passed the examination, staff requests payment of the national registry fee.

9. Once the national registry fee is received from the applicant, the license or certificate can be issued.

Applicants should be aware that Board staff works very hard to move each application through these steps as quickly as possible. To be fair to all applicants, all documentation is processed on a "first in-first out" basis.

WARNING: If an applicant applying under the 1998 Criteria waits until September or October to file the application, it is possible that the application process cannot be completed and the license or certificate issued by the October 31, 2008 deadline. If a problem occurs in any of the application processing steps, it could delay the issuance of a license or certificate for several weeks and in the worst case scenario, for a month or more.

For any applicant applying under the 1998 Criteria, if the license or certificate IS NOT ISSUED by the Board on or before October 31, 2008, the applicant will be required to meet the 2008 Criteria. THIS INCLUDES THOSE APPLICANTS GRANTED A 100-DAY EXTENSION FROM THE DATE OF FILING APPLICATION TO PASS THE EXAMINATION.

NATIONAL UNIFORM EXAMINATION IS A PRACTICE-BASED EXAMINATION

The Board has received numerous complaints about the difficulty of the new examination implemented effective January 1, 2008. **The examination is not an Arizona examination**, but is a national examination developed by the Appraiser Qualifications Board that all applicants

throughout the country must successfully pass to become an appraiser. There is a specific examination for each appraiser classification--licensed, certified residential and certified general.

In developing the examination, job-relatedness and application were the dominating considerations in developing questions for the uniform national examinations. The scenarios (vignettes) were developed based on actual experiences in performing the work required of appraisers. The questions require that applicants use the relevant information in the scenario to arrive at the correct answer. Other scenario-type questions require calculations to derive a numeric answer and a further elaboration of the question might require that the calculations be used to arrive at the correct course of action. Questions relating to Appraisal Standards and Ethics are also applied in that the questions are designed to measure understanding, not just a recall of the information. To reiterate, the questions are designed to assess the ability of applicants to solve problems that they would encounter in carrying out their job as a real property appraiser. **A knowledge base is important but the ability to use that knowledge is the purpose of the examinations.**

Other than the examination handbook and the examination information on The Appraisal Foundation's website at www.appraisalfoundation.org, there are not currently any study materials available that assist in the passing of the examination. Please note that state appraiser licensing and certification examinations offered prior to January 1, 2008, essentially tested an applicant's ability to recall information learned in qualifying educational offerings. In addition to being based on the 2008 Criteria, which requires an increased amount of qualifying education, the National Uniform Licensing and Certification Examinations offered as of January 1, 2008, test a candidate's ability to *apply* the knowledge (and possibly experience) they have obtained. Candidates taking a state licensing or certification exam in 2008 are required to not only **know** things, but to also **know how to do** things.

BOARD ADOPTS CRITERIA AND SUPERVISING APPRAISER/TRAINEE RULE AMENDMENTS EFFECTIVE 5/31/08

The Board adopted rule amendments to R4-46-201, which adopt the January, 2008 version of the 2008 Criteria; require that 75% of an applicant's experience include inspection of the subject; to R4-46-101, which revises the definition of "Direct Supervision"; and to R4-46-201 which require existing supervising appraisers to obtain four hours of continuing education in the role of a supervising appraiser **by 7/30/08**; require new supervising appraisers to obtain four hours of continuing education in the role of a supervising appraiser prior to engaging a trainee; and provide for enforcement of the supervising appraiser/trainee rules. A list of approved supervising appraiser courses is available on the Board's website under Education and also under Supervising Appraisers/Trainees. **The rules became effective 5/31/08.** The entire text of the rule amendments is located on the Board's website under Laws.

**BOARD ADOPTS
REVISED SUBSTANTIVE POLICY STATEMENT #2,
GUIDELINES FOR
SUPERVISING APPRAISERS AND TRAINEES**

On May 15, 2008, the Board adopted Revised Substantive Policy Statement #2, Guidelines for Supervising Appraisers and Trainees to conform to the revised rules concerning supervising appraisers and trainees which became effective May 31, 2008. The entire text of the revised substantive policy statement is available on the Board's website under Laws.

**BOARD APPROVES REVISED FAQs
REGARDING SUPERVISING APPRAISERS/TRAINEES**

On May 15, 2008, the Board approved revised FAQs regarding Supervising Appraisers/Trainees. The entire text of the FAQs is available on the Board's website under FAQS.

**BOARD ADOPTS RULES REVISING
FEES FOR COURSE APPROVAL**

Fees for Course Approval were amended and became effective 3/8/08. The rules also eliminate the fee for a duplicate license or certificate. The entire text of the rule amendments is located on the Board's website under Laws.

A "DAY WITH THE BOARD"

At it 6/08 meeting, an advisory committee was appointed to prepare recommendations to the Board concerning the implementation of "A Day with the Board". It is the Board's intent to begin an outreach program to meet with as many Arizona appraisers to discuss appraisal and Board issues. Be sure to go to the Board's home page and subscribe to join the Board's email list to receive updates as this exciting new outreach program develops.

**BOARD RECEIVES EXTREMELY FAVORABLE
RESULTS FROM BIENNIAL FIELD REVIEW BY
THE APPRAISAL SUBCOMMITTEE**

The Board received its biennial field review by the policy managers of the Appraisal Subcommittee who oversees states' compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Kristi Klamet, Policy Advisor, advised that the results of the biennial field review of the Board were extremely favorable and complimented the Board and staff. Ms. Klamet reported that the Board and staff are handling applications, education, and complaints in a timely manner and that the policies, practices and procedures are in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Ms. Klamet advised that Board statutes, A.R.S. §§ 32-3619 and 32-3628, should be amended to comply with the Real Property Appraiser Criteria adopted by the Appraiser Qualifications Board, which requires that appraisers returning from active military duty have a period of 90 days to complete all continuing education (rather than 180 days provided in Board statutes). **NOTE:** Senate Bill SB1006 passed by the State Legislature and signed by Governor Napolitano on 5/12/08 revised Board statutes to require

that appraisers returning from active military duty have a period of 90 days to complete all continuing education. The Bill becomes law 9/25/08, making the Board in full compliance with Title XI.

**STATE HOUSE BILL INTRODUCED TO ROLL
ARIZONA BOARD OF APPRAISAL INTO
ARIZONA DEPARTMENT OF REAL ESTATE DIES**

HB2774 introduced at the State Legislature to roll the Arizona Board of Appraisal into the Arizona Department of Real Estate was never heard and died.

**STATE BILL INTRODUCED TO REQUIRE
LICENSURE OF LOAN ORIGINATORS PASSES**

SB1028 introduced at the State Legislature requiring the licensure and regulation of loan originators by the Arizona Department of Financial Institutions passed and was signed by Governor Napolitano on 7/7/08. The law will become effective January 1, 2010.

**2008-2009 USPAP IS FIRST EDITION TO BE
EFFECTIVE FOR TWO YEARS**

The Board adopted the 2008-2009 Edition of USPAP (2008-2009 USPAP) effective January 1, 2008. The 2008-2009 USPAP is the first edition adopted by the Appraisal Standards Board to be effective for two years and will be effective through December 31, 2009.

RENEWAL REQUIREMENTS

Information concerning renewal requirements, including USPAP requirements, is posted on the Board's website under Important Information. As required by rule, renewal notices and applications are mailed out not less than 60 or more than 90 days prior to the expiration of a license/certificate. However, the requirement information on the Board's website is kept current and is a useful tool in preparing for renewal during an appraiser's renewal cycle.

**AN APPRAISER ON INACTIVE STATUS
(FOR OTHER THAN MILITARY DUTY)
MUST RENEW HIS/HER LICENSE/CERTIFICATE**

A license or certificate holder on inactive status must pay the renewal fee and complete an application for renewal not earlier than ninety days or later than thirty days before the expiration date of the license or certificate then held. A license or certificate holder on inactive status is not required to provide evidence of completion of the continuing education requirements until the application for reactivation is filed. In other words, appraisers with licenses or certificates on inactive status must still pay the renewal fee and file the renewal application with the Board at the USUAL renewal time; however, the proof of completion of the required continuing education is not required until the appraiser applies for reactivation of the license/certificate. The complete instructions and application for inactive status are available on the Board's website under Licensing <Requirements and Application Forms.

**BOARD ISSUES COMMENT LETTER TO THE OFFICE
OF FEDERAL OVERSIGHT (OFHEO) REGARDING
THE HOME VALUATION CODE OF CONDUCT (HVCC)**

Information concerning the New York Attorney General, Fannie Mae and Freddie Mac Agreements to Combat Appraisal Fraud is available at www.ofheo.gov. The Board issued the following comment letter to the OFHEO:

April 18, 2008

Office of Federal Housing
Enterprise Oversight (OFHEO)
1700 G Street, NW
4th Floor
Washington, DC 20552

RE: Home Valuation Code of Conduct

To Whom It May Concern:

The Arizona Board of Appraisal appreciates the opportunity to submit comments regarding the Home Valuation Code of Conduct.

The Board would like to applaud your advocacy for appraisal independence and your goal to prevent lender pressure. The Board agrees that it is not only necessary that the appraiser be competent to complete an appraisal assignment, but that the party making the decision of which appraiser to hire also be competent to make such a decision. The Board agrees with the Attorney General that the accuracy and independence of the appraisal process must be ensured and protected.

The Board urges that the ramifications of using appraisal management companies be carefully considered. It has been the Board's experience that complaints regarding appraisal management companies are not subject to any oversight or regulation. To that end, the Board is concerned that the integrity of the primary and secondary markets will not improve if current practices by these companies do not change. The focus of these companies appears to be primarily speed and cost with little or no emphasis on quality of the appraisal or experience and competence of the appraiser. To ensure a greater emphasis on a quality product to restore public trust, it is imperative that appraiser management companies be regulated, either federally or required of all states at the state level.

The Board is available to be of any assistance to you in the implementation of this new program.

Sincerely,

/S/
Lester G. Abrams
Chairman

/S/
Deborah G. Pearson
Executive Director

**UNDUE PRESSURE ON
APPRAISERS BY LENDERS**

Appraisers report numerous instances where a lender has exerted undue pressure to come to a certain value or to change an appraisal when it should not be changed. ***THIS IS A CLASS 6 FELONY.*** Board statute, A.R.S. 32-3633. Undue Influence; Classification, states: "A person who induces or influences the actions of an appraiser for purposes of securing an appraisal that is grossly misleading, or fraudulent, is guilty of a class 6 felony." Appraisers are urged to contact the appropriate government agency that regulates the lender. Visit the Arizona Department of Financial Institution's website at www.azdfi.gov to determine what government agency regulates the lender so that a complaint can be filed.

ARIZONA MORTGAGE FRAUD TASK FORCE

The Board continues to participate as an active member of the Arizona Mortgage Fraud Task Force. The task force was created by Felicia Rotellini, Superintendent of the Arizona Department of Financial Institutions, to enable multiple federal, state, county and city agencies to work together to combat mortgage fraud in Arizona. The Board's Executive Director, Deborah Pearson, made a presentation at the task force's 4/08 meeting concerning the Board disciplinary rules and their enforcement.

**NOTIFY THE BOARD
OF ANY ADDRESS CHANGE**

Pursuant to A.R.S. § 32-3621(D), appraisers, as well as applicants for a license or certificate, MUST notify the Board in writing of any change in **permanent business, residence address, or daytime telephone number** within ten days of the change. **FAILURE TO COMPLY WITH THE BOARD STATUTE COULD RESULT IN BOARD ACTION.** A Change of Address form is available on the Board's website under Forms.

WHAT GOES UP MUST COME DOWN
Debra Rudd, Arizona Board Vice Chairperson

There seems to be a universal truth that eventually what goes up, must come down. This has once more been proven in our Arizona market. While we were seeing runaway prices in the 2005-06 market, we are experiencing a much different market today. Values in the past 18 months have dropped in several areas of the state, but I am amazed at the number of my fellow appraisers that are hesitant to check that "declining" box in the neighborhood section of the Fannie Mae forms. I have heard recently from two appraisers that they cannot mark "declining" because that is *forecasting*, and that their appraisals are based on the past closed sales and current listings. Using this logic, I wonder how they can mark ANY of the boxes (increasing or stable), as this too could be classified as forecasting. I am guessing that these same people had no problem making an upward time adjustment in the past increasing market.

Market conditions have become more difficult to analyze, but are even more important to appraisers and their clients today than in the past. Considering that in some markets the only sales are now lender owned properties

(foreclosures), and in these same markets the listings outnumber the sales at least two to one, I find it hard to understand how the appraiser can ignore the possibility of continued downward pressure on values. On the other hand, based on statistical analysis through the MLS, some neighborhoods or micromarkets are showing stable values. As a review appraiser, I have the opportunity to see a variety of ways appraisers are handling the analysis of current market conditions. Some have taken a very broad perspective of maybe a whole Metropolitan Area average home price from one year ago as compared to the average home price today, to an extensive analysis of a homes only in a subdivision that have sold one year ago, six months ago, and three months ago. While there is no one right or wrong way of completing this analysis, I encourage my fellow appraisers to continue to show this analysis and to follow through with consistent adjustments, if necessary.

Fannie Mae in their Announcement 07-22 posted on their website lists the following services that can be used by appraisers and lenders to assist in measuring a market trend:

- S&P/Case-Shiller® Home Price Indices. These indices rely on purchase price and related information obtained from county assessor and recorder offices.
- Office of Federal Housing Enterprise Oversight (OFHEO) Index. For indications of market decline, lenders should use the index based on purchase loan data. Purchase-only indexes at the state level can be found at www.ofheo.gov/download.asp.
- National Association of REALTORS® (NAR) statistics on changes in median prices. NAR releases statistics on state-by-state existing-home sales and metropolitan area median home prices each quarter.

Whether you are using the above sources or are relying on your own measurement of the market, I can assure you that another Law or Principle will come into play soon. And that is "the only thing that remains the same is change".

DEFINITION OF "COMPLEX" PROPERTY

If a property has no comparable sales available, it is a complex property. Board statutes define "Complex one to four residential units" as property that is atypical for the marketplace. Atypical factors may include architectural style, age of improvements, size of improvements, size of lot, neighborhood land use, potential environmental hazard liability, leasehold interests, limited readily available comparable sales data or other unusual factors.

WHO CAN SIGN AN APPRAISAL?

Although this is not new, it has come to the Board's attention that some appraisers may not understand who can sign an appraisal. The Comment to Standards Rule 2-3 specifically states: "*An appraiser who signs any part of the appraisal report, including a letter of transmittal, must also sign the certification. In an assignment that includes only assignment results developed by the real property appraiser(s), any appraiser(s) who signs a certification accepts full responsibility for all elements of the certification, for the assignment results, and for the contents of the appraisal report.*" USPAP does not define

or otherwise address the term, Supervisory Appraiser. The term was introduced by authors of several heavily utilized residential appraisal forms. When two appraisers are working on an appraisal assignment, and the appraisal assignment is beyond the scope of one of the appraiser's classification, only the appraiser whose appraiser classification scope is not exceeded can sign the appraisal. On the common residential forms, the appraiser would sign on the left AND WOULD NOT SIGN AS A SUPERVISORY APPRAISER. The second appraiser CANNOT SIGN the report because the second appraiser would be *accepting full responsibility for all elements of the certification, for the assignment results, and for the contents of the appraisal report*" beyond the scope of his appraiser classification. However, in accordance with Standards Rule 2-2(a)(vii), (b)(vii), and (c)(vii), the extent of the assistance by the appraiser who does not sign the report MUST BE described, summarized or stated (depending on the reporting option used) within the report. This required disclosure could be included within the certification, but it could also be included in some other section of the report.

ADVERTISING OR CHARGING APPRAISAL FEES ACCORDING TO APPRAISED VALUE VIOLATES USPAP

It has been brought to the Board's attention that some appraisers are advertising and charging appraisal fees based on tiered appraisal fees schedules. Advertising or charging appraisal fees according to appraised value, e.g., to list the fee for assignments with appraised values between \$100,000 and \$299,000, \$300,000 to \$499,000, etc. **IS A VIOLATION OF USPAP.** A compensation arrangement for assignments that is contingent on the amount of the value opinion is prohibited by the Management section of the ETHICS RULE, which states, in part: "It is unethical for an appraiser to accept an assignment, or to have a compensation arrangement for an assignment, that is contingent on any of the following: . . . 3. the amount of a value opinion;" However, please note that USPAP does not prohibit an appraiser's fee from being based on an owner's estimate, a pending sale price of the subject property, loan amount, or any other factor outside the appraiser's control.

OFFERING REDUCED FEE IF LOAN DOES NOT CLOSE IS A USPAP VIOLATION

Offering a client a reduced fee on an appraisal if the client's loan does not close is in violation of the ETHICS RULE. The Management section of the ETHICS RULE states:

It is unethical for an appraiser to accept an assignment, or to have a compensation arrangement for an assignment, that is contingent on any of the following: . . . 5. the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.

Standards Rule 2-3, as applicable, also requires an appraiser to state that his or her compensation for completing the assignment is not contingent upon a subsequent event.

PROVIDING COMP CHECKS OR FREE VALUE CHECKS VIOLATES USPAP

Offering clients “comp checks” or “free value checks” is in violation of the ETHICS RULE of USPAP. The Conduct and Management sections of the ETHICS RULE, particularly in regard to assignments offered under condition of “predetermined opinions or conclusions” or compensation conditioned on the reporting of a predetermined value result, a direction in assignment results that favors the cause of the client, the amount of a value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the appraiser’s opinions and specific to the assignment’s purpose. If an appraiser is asked whether a specific property has a value (a point, a range, or a relationship to some benchmark), that request is for an opinion of value (an appraisal). Appraisers must comply with USPAP and must develop a real property appraisal in accordance with STANDARD 1. Communicating that value opinion must be accomplished in accordance with STANDARD 2.

Please review:

- The definitions of “Appraisal,” “Appraisal Practice,” “Assignment” and “Scope of Work” in the DEFINITIONS section of USPAP.
- Standards Rule 1-1(b), particularly as it relates to diligence in the level of research and analysis necessary to develop credible opinions and conclusions.
- Standards Rules 1-2(f), (g) and (h) regarding identification of the scope of work necessary to complete an assignment and any extraordinary assumptions or hypothetical conditions necessary in an assignment.
- Standards Rules 1-5(a) and (b), regarding the analysis of current or historical market activity regarding the property appraises.
- The SCOPE OF WORK RULE, with particular attention to the appraiser’s responsibility in connection with the scope of work decision and disclosure obligations.

MONTHLY USPAP Q&A AVAILABLE ON THE APPRAISAL FOUNDATION'S WEBSITE

In addition to the Frequently Asked Questions that appear in USPAP, each month the Appraisal Standards Board (ASB) issues USPAP Q&A to respond to questions, to illustrate the applicability of USPAP in specific situations, and to offer advice from the ASB for the resolution of appraisal issues and problems. To view the monthly USPAP Q&A, visit www.appraisalfoundation.org, USPAP/Standards, USPAP Monthly Q & A. The following two questions appeared in the May, 2008 USPAP Q & A and are reprinted with the express permission of the ASB:

Is it Permissible to Use MLS Photos for Comparable Sales?

Question:

I use “standard” pre-printed appraisal report forms that contain a statement saying I personally inspected the exterior of the comparable sales. The assignment conditions require me to comply with this statement and do not permit any alterations. One of my clients now requires two additional sales of comparable properties to be included with every appraisal report. However, the client told me not to inspect the exterior of these additional sale comparables and to just use the MLS photos. May I comply with the client’s request?

Response:

No, because you are being asked to not inspect the comparable sales when the form states that you have. You must either inspect the sales or change your report to indicate you did not inspect the sales.

Is it Permissible to Use MLS Photos for Active Listings?

Question:

I use a pre-printed appraisal report form that contains a statement saying I personally inspected the exterior of the comparable sales, but it does not address active listings. One of my clients now requires two additional active listing comparable properties to be included with every appraisal report. However, the client told me not to inspect the exterior of these active listings and to just use the MLS photos. Am I compliant with USPAP if I do not physically inspect the exterior of these properties and only use the MLS photos?

Response:

Yes, because USPAP does not require physical inspections or photographs. However, both are often required by clients. If an inspection of the active listing comparables is not required for credible assignment results, and it is not contrary to assignment conditions or specific statements in the report, then using an MLS photo and not performing an exterior inspection would be acceptable.

CAN'T FIND ANSWER TO USPAP QUESTION?

If you can't find an answer to your USPAP question, there are several National USPAP Instructors in Arizona that are approved by the Appraiser Qualifications Board who are the State's USPAP gurus. You may want to contact one of them concerning your USPAP questions. Those experts are:

Howard C. Johnson, rockyappr@aol.com
Roy E. Morris III, profvalsvc@aol.com
Thomas F. Morrison, tmorrison@azdor.gov
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THE FANNIE MAE FORMS ARE NOT INTENDED FOR ANY NON-LENDER WORK

Larry R. Green, Oregon Appraiser Compliance Analyst

FannieMae (FNMA) revised their suite of appraisal forms in March 2005 specific to their mission of a government-sponsored entity. With these new appraisal forms, FNMA attempted to alleviate investor concerns associated with their portfolios of mortgage-backed securities. FNMA specifically changed portions of their forms to narrow the intended user/use, the appraisal process, and the scope of work. In so doing, FNMA designed their forms solely for lending/client use. Consequently, *none of FNMA's March 2005 forms are intended for nonlender appraisal assignments.*

Let's examine the Uniform Residential Appraisal Report (FNMA 1004), one of the most widely used residential forms. Problems using this form for non-lender assignments arise on page one and page four, and certification items on pages five and six may cause greater appraiser liability. The top of page one identifies the purpose of the appraisal report as: *"The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property."* Note here the appraisal begins conjoining the lender as the client. At the top of page four, second paragraph, *"This appraisal report is subject to the following **scope of work, intended use, intended user, definition of market value..... modifications, additions, or deletions to the intended use, intended user, definition of market value or assumptions and limiting conditions are not permitted.**"*

The fourth paragraph is titled: **"Intended Use: The intended use of this appraisal report is the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction."** This statement eliminates the use of the appraisal for any other purpose than for lender/client use.

The fifth paragraph is titled: **"Intended User: The intended user of this appraisal report is the lender/client."** This statement restricts the user of the appraisal to none other than a lender/client.

Addendums contravening the scope of work, intended use, and intended user do not work because in the scope of work description states "Modifications, additions, or deletions to the intended use, intended user.....are not permitted." You're trapped! If you use FNMA March 2005 forms for non-lender assignments, you are open to USPAP Ethics Rule and Standard Rule violations.

For non-lender assignments, use a residential appraisal form specifically designed for non-lender assignments or the old FNMA 1004 with supplemental limiting condition and certification addendums, found with most software vendors.

UPDATE APPRAISALS

Bob Keith, Oregon Administrator

Appraisers are often called to update a previous appraisal report. Advisory Opinion 3 in USPAP provides advice from the Appraisal Standards Board (ASB) on the Update of a Prior Appraisal. It states:

Regardless of the nomenclature used, when a client seeks a more current value or analysis of a property that was the subject of a previous assignment, this is not an extension of the prior assignment that was already completed – it is simply a new assignment..... [t]he same USPAP requirements apply when appraising or analyzing a property that was the subject of a prior assignment.

Regarding Development Requirements, the ASB writes:

The scope of work in the new assignment may be different from the scope of work in the prior one. Rather than duplicating steps in the appraisal process, the appraiser can elect to incorporate some of the analysis from the previous assignment (those items that the appraiser concludes are credible and in compliance with the applicable development Standard) into the new assignment through the use of an extraordinary assumption.

Regarding Reporting Requirements, the ASB writes:

The new report is not required to have the same level of detail as the original report – i.e. a different report option (i.e. self contained, summary, or restricted use appraisal report) may be used. However, the new report must contain sufficient information to be meaningful and not misleading to the intended users. There are three ways that the reporting requirements can be satisfied for these types of assignments:

- 1. Provide a new report that contains all the necessary information/analysis to satisfy the applicable reporting standard, without incorporation of the prior report by either attachment or reference.*
- 2. Provide a new report that incorporates by attachment specified information/analysis from the prior report so that, in combination, the attached portions and the new information/analysis added satisfies the applicable reporting requirements.*
- 3. Provide a new report that incorporates by reference specified information/analysis from the prior report so that, in combination, the referenced portions and the new information/analysis added satisfies the applicable reporting requirements. This option can only be used if the original appraiser's firm and the original intended users are involved, since the prior report was issued from that appraiser to those intended users, assuring they have access to a copy. When this incorporation by reference*

option is used, the following items from that prior report must be specifically identified in the new report to avoid being misleading:

- *Subject property*
- *Client and any other intended users*
- *Intended use*
- *Appraiser(s)*
- *Effective date of value or assignment results*
- *Date of report, and*
- *Interests appraised*

When information is being extended to the report by use of an extraordinary assumption, the requirements in USPAP for use of an extraordinary assumption must be met.

Don't forget that every appraisal report, including an Update of a Prior Appraisal, requires a certification. If you are incorporating (by attachment or reference) the certification from the original appraisal report, you must make certain that nothing in that certification conflicts with the scope of work in the second report. For example, the certification for the Fannie Mae (appraisal report) form 1004 contains a certification that the appraiser developed the appraisal in accordance with the scope of work requirements that are stated in the report. The scope of work is contained in a pre-printed portion of the form (page 4) and it states that the appraiser inspected the interior and exterior of the subject property and the exterior of the comparable sales. If the update appraisal assignment calls for a different scope of work, such as no inspection of the subject or comps, then the appraiser cannot incorporate the certification from the original report into the update report. In this case, the appraiser must attach a certification to the update report that accurately certifies what the appraiser did or did not actually do in the update assignment.

Regarding Confidentiality Requirements, the ASB writes:

In all assignments, the appraiser must comply with Confidentiality section of the Ethics Rule with respect to handling of confidential information – i.e. if the prior appraisal report included any confidential information, its disclosure in a new report to a different client or intended users might violate the Ethics Rule.

USPAP defines confidential information as:

Information that is either identified by the client as confidential when providing it to the appraiser and that is not available from any other source; or that is classified as confidential or private by applicable law or regulation.

Regarding Record Keeping Requirements, the ASB writes:

If the assignment includes use of, or reliance upon, all or part of a prior report, that report (or the portions used or relied upon) must be retained in the work file for the new assignment or its location must be properly referenced in the work file.

Residential appraisers are familiar with the one page Fannie Mae form 1004D which is the Appraisal Update and/or Completion Report. The appraiser is asked to check a box yes or no in answer to the question "Has the market value of the subject property declined since the effective date of the original appraisal?" The answer to this question is an opinion of value (an appraisal) because it provides a direction of value relative to a benchmark (the value opinion in the original appraisal report). Accordingly, the appraiser must develop that opinion of value in compliance with Standard 1 in USPAP. Remember that portions of the development of the update appraisal may be incorporated by either attachment or by reference. Therefore only those portions of development *not* incorporated from the original appraisal must be developed in the update appraisal and appropriately reported according to the reporting option (usually a summary appraisal report) utilized in the update appraisal.

For example, presume an appraiser completed an appraisal assignment six months ago for a lender client using the Fannie Mae form 1004. Today, the same lender asks the same appraiser to provide an update appraisal using the Fannie Mae form 1004D. Can the appraiser simply do a quick check of MLS comps and fill out the form indicating that the value of the subject property has not declined?

The answer is no if all the appraiser does is fill out the 1004D form and send it to the client. The update appraisal report must contain an addendum summarizing the data that was considered and the analysis performed in arriving at the opinion that the subject value has not declined since the original effective date of value. Note that certification number 4 in the Appraiser's Certification section of the 1004D states: "I have summarized my analysis and conclusions in this appraisal update and retained all supporting data in my work file."

The update addendum must also specify any changes in the scope of work that was performed in the update assignment relative to the scope of work in the original assignment. For example, if the cost approach was performed in the original appraisal, but not in the update assignment then the appraiser cannot incorporate the original scope of work into the update assignment.

In this case, the appraiser must attach an addendum specifying the actual scope of work utilized in the update assignment. The scope of work section of the Fannie Mae form 1004D is not sufficient to stand on its own to achieve USPAP compliance with the Scope of Work Rule.

Also, certification number three in the Appraiser's Certification section of 1004D states: "I have updated the appraisal by incorporating the original report." The problem here is, as stated above, there are two methods of "incorporation", one is by attachment and the other is by reference. Therefore the update addendum must specify which method of incorporation is utilized in the update appraisal.

In summary, update appraisals of prior appraisal assignments are permitted, but special attention must be paid to proper development (Standard 1) of the update opinion of value and proper reporting (Standard 2). If the appraiser does not provide an entirely new report for the

update assignment (without incorporation), he or she must incorporate the prior (original) report by reference or by attachment. Incorporation by reference can only be utilized if the original appraisal firm and intended users are involved. Appraisers who use the Fannie Mae 1004D Update Appraisal form must be cognizant of supplemental information that must be included in an addendum to 1004D form. Utilizing an accurate certification, properly identifying the scope of work for the update appraisal, and disclosing the method of attachment are among the items for consideration in a supplemental addendum to the update report.

INSPECTION OF REAL ESTATE DO WHAT YOU SAY AND SAY WHAT YOU DO

One of the practical rules of appraisal is to “Do what you say you are going to do” in the completion of the assignment and then “Say what you did” in the appraisal report. This rule applies in all instances but has special applicability in the inspection of real estate. Many appraisers are just not aware when they sign a certification attesting to their inspection of the interior and exterior of the subject property and the exterior of the comparables that they must have *personally* inspected the interior and the exterior of the subject property and the exterior of the comparables.

It is unethical to sign a certification falsely attesting to inspection of the interior and exterior of the subject property and the exterior of the comparables without having done just that. It is unacceptable to sign any certification in which you are attesting to actions which you undertook in the completion of the assignment when you did not actually undertake those actions.

By signing a FannieMae certification appraisers make specific certifications with regard to the degree of inspection of the subject and the comparables. These certifications are made by the individual signing the certification. In Oregon, that person *cannot be* a registered appraiser assistant. [In Arizona, that person cannot be a trainee.] As a result, it is misleading and unethical for an appraiser to sign a certification stating they inspected the interior and the exterior of the subject and the exterior of the comparables when indeed *only* the appraiser assistant [trainee] inspected the interior and the exterior of the subject and the exterior of the comparables.

Depending on the intended use of the appraisal and the scope of work, it can be permissible for appraisers to not inspect all or part of the subject and the comparables. Many appraisers address this issue by physically altering the FannieMae certification to reflect the actual degree of their inspection of the real estate. This is appropriate under Uniform Standards of Professional Appraisal Practice for non-FannieMae assignments. The practical problem for appraisers who complete FannieMae type assignments is that FannieMae does not allow any changes to their certifications and limiting conditions.

Some appraisers unsuccessfully attempt to address the issue by adding a statement in FannieMae type assignments that, although they signed a certification attesting to their inspection of the subject and comparables, they really did not perform the inspections

which are attested to in the certification. They add the statement because FannieMae does not allow physical alterations to the original certifications and limiting conditions. Adding a statement in the appraisal report, about the appraiser’s lack of inspection, that is contrary to the original signed certification and limiting conditions is not acceptable to FannieMae. FannieMae representatives have told the Board staff they view such a statement by the appraiser as a limiting condition. FannieMae does not permit appraisers to add limiting conditions to appraisal assignments completed for its use.

Remember, FannieMae is a government sponsored enterprise (GSE). The Supplemental Standards Rule of USPAP provides that “Supplemental standards applicable to assignments prepared for specific purposes or property types may be issued (i.e. published) by government agencies, government sponsored enterprises or other entities that establish public policy.” As a result, FannieMae’s position with respect to inspections, certifications and limiting conditions becomes the basis of certain Supplemental Standards which apply in an assignment completed for FannieMae or in accordance with FannieMae guidelines. [Note that the Supplemental Standards Rule of USPAP has been abolished and replaced with the Scope of Work Rule of USPAP.]

The short story here is if the appraisal assignment is to be used by FannieMae or is intended to be completed according to FannieMae guidelines, you must be fully aware of every element of the certification and limiting conditions that you are attesting to. Don’t attest to something you have not done. Never forget the basic appraisal practice maxim to “Say what you do” and “Do what you say”.

EXCESS AND SURPLUS LAND

Larry R. Green, Oregon Appraiser Compliance Analyst

*Once upon a time in a land far far away an appraiser inspected a property with a site that appeared much greater in size than needed to support the current utilization of the improvement. The appraiser developed their value opinion considering the site’s supercalifragilisticexpialidocious character and completed the assignment. Although this begins to sound like the proverbial fairy tale, it is a problem real property appraisers face in many assignments. Let’s look at the differences between *excess land* and *surplus land* and how each should be identified and valued.*

The Dictionary of Real Estate Appraisal defines *excess land* as, “In regard to an improved site, the land not needed to serve or support the existing improvement. In regard to a vacant site or a site considered as though vacant, the land not needed to accommodate the site’s primary highest and best use. Such land may be separated from the larger site and have it own highest and best use, or it may allow for future expansion of the existing or anticipated improvement.”

You can see the concept of *excess land* is founded in highest and best use analysis. The four highest and best use tests of legal permissibility, physical possibility, financial feasibility, and maximum profitability are considered and applied to the portion of the site identified

as *excess land*. A property's land-to-building ratio (a.k.a. site coverage ratio) can help to identify *excess land*. To illustrate, let's consider Property A developed with a 25,000 square foot light industrial building situated on an 80,000 square foot industrially zoned site. The land-to-building ratio for this property is 3.2:1. Similar improved industrial properties have land-to-building ratios from 2.8:1 to 3.6:1, or from 70,000 square feet up to 90,000 square feet of land area. Parcel size and gross building areas meet market demands for several alternative users. Zoning regulations require minimum dimensional standards of 65,340 square feet, identified as 1.5 acres in the zoning ordinance. The property represents its highest and best use as vacant and as improved. Now consider Property B developed with a 25,000 square foot light industrial building situated on a 150,000 square foot industrially zoned parcel. Property B has a land-to-building ratio of 6.0:1. This property's parcel size is larger than needed to support prospective alternative uses of the improvements. Remember, typical users of this property type only require land-to-building ratios of 2.8:1 to 3.6:1, or from 70,000 up to 90,000 square feet of land area. Consequently, from 65,340 (zoning minimum dimensional standard) to 80,000 square feet of Property's B site may be *excess land*. Let's conclude a 75,000 square foot site parcel provides the optimum size to meet market demands and offers the greatest potential to alternative land users. We need to apply the above four highest and best use tests to support the reasoning to make this determination for *excess land*. The analysis may read like this: Legal Permissibility - The site portion identified as *excess land* meets and exceeds zoning regulation minimum dimensional standards; Physically Possible - it will support industrial buildings from 20,833 square feet up to 26,786 square feet (building ratios from 2.8:1 to 3.6:1) meeting market demand; and for the purpose of this illustration, Financially Feasible - let's assume interest rates are attractive to borrowers and investors, and Maximally Profitable - let's assume a proposed light industrial use meets market demand and allows for entrepreneurial profit. We have just identified Property B has *excess land* having its own highest and best use as a potential building site for industrial improvement. Obviously with many other considerations of set back, landscape requirements, easements, access, etc. Next, we select comparable sales data to value this portion of the site based on this highest and best use conclusion. Location in the market area, zoning, parking requirements, availability of utilities, topography, soils, access, off-site development costs, and environmental influences must be studied to assess just how comparable each property actually is to the subject property. For illustration, similar competitive land sales indicate a price per square foot range from \$11.50 to \$14.00. We estimate an appropriate market based price per square foot rate of \$12.00 and apply this rate to our identified *excess land* of 75,000 square feet to arrive at a value estimate for the *excess land* of \$900,000.

The same basic procedure applies to residential property. However, *excess land* identification will typically not employ a land-to-building ratio technique, but focus on dimensional standards promulgated in zoning ordinances. The numbers will change, but the process is similar.

Now, let's turn our attention to *surplus land*. The source cited previously defines *surplus land* as, "Additional land

that allows for future expansion of the existing improvement(s); cannot be developed separately and does not have a separate highest and best use. Surplus land is associated with an improved site that has not been developed to its maximum productivity according to its highest and best use as though vacant." Note here, *surplus land* does not have its own highest and best use. It must be valued in context of its contribution to its "parent" site. In this illustration, let's identify Property C with a 25,000 square foot light industrial building situated on an 110,000 square foot industrially zoned site. The same zoning regulations apply to Property C that requires minimum dimensional standards of 65,340 square feet, identified as 1.5 acres in the zoning ordinance. However, this property has a land-to-building ratio of 4.4:1 exceeding those previously identified from 2.8:1 to 3.6:1 as meeting market demands of land and building users. Using the highest land-to-building ratio, a land parcel of 90,000 square feet is calculated to represent the largest optimum parcel size demanded by market participants. The difference between the actual parcel size of 110,000 square feet and the greatest optimum parcel size is 20,000 square feet. In this scenario, Property C has 20,000 square feet of *surplus land*. To value this portion of a parcel will require the appraiser to estimate its contributory value to the overall parcel. To accomplish this task, we can use paired data set analysis and plottage analysis. The most accessible and understood is the paired data set analysis. To illustrate, we have gathered several data set analyses pairing smaller parcels with slightly larger parcels to extract the differences in the price per square foot paid by market participants. Alienated to the economic theory of economies of scale, these pairings indicate from \$3.00 to \$4.50 per square foot. In other words, we have extracted how much market participants are willing to pay for this additional land, known as *surplus land*. For this illustration, we estimate \$3.50 per square foot as best representing market reaction to *surplus land*. Noted here is the significant difference between *excess land* valued at \$12.00 per square foot in comparison to *surplus land* valued at only \$3.50 per square foot.

Residential property application uses the same procedure identifying *surplus land*. In many market areas where acreage building sites are concerned, the unit of comparison for a residential acreage building site is in fact, just the building site. Take for example a eight-acre home site parcel located in an area regulated by zoning ordinances requiring five-acre dimensional standards. Paired data set analysis may indicate minimal or inconclusive evidence showing any market reaction to the *surplus land*. In this scenario, there may not be any identifiable value contribution from *surplus land*, and when this data is used in a comparative analysis, adjustment to comparable data may not be warranted or the contribution of the surplus land may be relatively small compared to the incremental value per acre.

In conclusion, the appraiser's recognition and employment of these valuation techniques is paramount in the appraisal process and provides the support and reasoning necessary for a credible value opinion. The above illustrations are simplified and in reality, there are many additional criteria for consideration, such as setback requirements, easements, and parking to name a few. Hope this helps and happy appraising out there!